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6 Attorneys for Defendant,
PROGRESSIVE FINANCIAL SERVICES, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANSWER TO COMPLAINT

Defendant PROGRESSIVE FINANCIAL SERVICES, INC. (hereinafter "Defendant") hereby answers the Complaint of Plaintiff JOSCELIN B. THOMAS ("Plaintiff") as follows:

PRELIMINARY STATEMENT

1. Defendant admits that Plaintiff has brought an action asserting a claim for damages under the Fair Credit Reporting Act (“FCRA”) 15 U.S.C. §§ 1681, *et seq.*, however: Defendant denies any violation of the FCRA or wrongdoing whatsoever.

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JURISDICTION

2. Defendant admits that this Court has jurisdiction over Plaintiff's federal law claims. Except as specifically admitted herein, Defendant denies the allegations contained in Paragraph 2 of Plaintiff's Complaint.

3. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 3 of Plaintiff's Complaint, and therefore, denies the same at the present time.

VENUE

4. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 4 of Plaintiff's Complaint, and therefore, denies the same at the present time.

5. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 5 of Plaintiff's Complaint, and therefore, denies the same at the present time.

PARTIES

6. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 6 of Plaintiff's Complaint, and therefore, denies the same at the present time.

7. Defendant admits that it has an office at 1919 W. Fairmont Dr., Building 8, Tempe, Arizona 85282. Except as specifically admitted herein, Defendant denies the allegations contained in Paragraph 7 of Plaintiff's Complaint.

FACTUAL ALLEGATION

8. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 8 of Plaintiff's Complaint, and therefore, denies the same at the present time.

9. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 9 of Plaintiff's Complaint, and therefore, denies the same at the present time.

1 10. Defendant denies the allegations contained in Paragraph 10 of Plaintiff's
2 Complaint.

COUNT I

VIOLATION OF THE FAIR CREDIT REPORTING ACT (FCRA),

15 U.S.C. § 1681 WILLFUL NON-COMPLIANCE BY DEFENDANTS PFSI

6 11. Defendant incorporates by reference its responses to Paragraphs 1 through
7 10, above as if set forth herein.

8 12. Defendant asserts that the allegations in Paragraph 12 of Plaintiff's
9 Complaint makes no affirmative allegations against Defendant, and therefore; no
10 response from Defendant is required. To the extent that a response is required,
11 Defendant lacks sufficient knowledge to admit or deny the allegations contained
12 therein, and therefore; Defendant denies the same at the present time. Defendant also
13 denies the allegations on the grounds that they call for a legal conclusion.

13. Defendant asserts that the allegations in Paragraph 13 of Plaintiff's
Complaint makes no affirmative allegations against Defendant, and therefore; no
response from Defendant is required. To the extent that a response is required,
Defendant lacks sufficient knowledge to admit or deny the allegations contained
therein, and therefore; Defendant denies the same at the present time. Defendant also
denies the allegations on the grounds that they call for a legal conclusion.

20 14. Defendant asserts that the allegations in Paragraph 14 of Plaintiff's
21 Complaint makes no affirmative allegations against Defendant, and therefore; no
22 response from Defendant is required. To the extent that a response is required,
23 Defendant lacks sufficient knowledge to admit or deny the allegations contained
24 therein, and therefore; Defendant denies the same at the present time. Defendant also
25 denies the allegations on the grounds that they call for a legal conclusion.

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1 15. Defendant asserts that the allegations in Paragraph 15 of Plaintiff's
2 Complaint makes no affirmative allegations against Defendant, and therefore; no
3 response from Defendant is required. To the extent that a response is required,
4 Defendant lacks sufficient knowledge to admit or deny the allegations contained
5 therein, and therefore; Defendant denies the same at the present time. Defendant also
6 asserts that the FCRA speaks for itself.

7 16. Defendant asserts that the allegations in Paragraph 16 of Plaintiff's
8 Complaint makes no affirmative allegations against Defendant, and therefore; no
9 response from Defendant is required. To the extent that a response is required,
10 Defendant lacks sufficient knowledge to admit or deny the allegations contained
11 therein, and therefore; Defendant denies the same at the present time.

12 17. Defendant responds to the allegations in Paragraph 17, including subparts
13 "A" through "O", as follows:

14 A. Defendant lacks sufficient knowledge to admit or deny the
15 allegations contained in Paragraph 17, subpart "A" of Plaintiff's
16 Complaint, and therefore, denies the same at the present time.

17 B. Defendant admits that it had a permissible purpose under the FCRA
18 in obtaining Plaintiff's credit information from Experian. Except as
19 specifically admitted herein, Defendant denies the allegations contained
20 in Paragraph 17, subpart "B" of Plaintiff's Complaint.

21 C. Defendant admits the allegations contained in Paragraph 17,
22 subpart "C" of Plaintiff's Complaint. Defendant also admits that it had a
23 permissible purpose under the FCRA in obtaining Plaintiff's credit
24 information from Experian.

25 D. Defendant admits the allegations contained in Paragraph 17,
26 subpart "D" of Plaintiff's Complaint. Defendant also admits that it had a
27 permissible purpose under the FCRA in obtaining Plaintiff's credit
28 information from Experian.

1 E. Defendant admits that Plaintiff did not owe a debt to Defendant as
2 alleged in Paragraph 17, subpart "E" of Plaintiff's Complaint, and
3 Defendant admits that it attempted to collect a debt owed by Plaintiff to
4 a third-party .

5 F. Defendant admits that Plaintiff did not owe a debt to Defendant as
6 alleged in Paragraph 17, subpart "F" of Plaintiff's Complaint, and
7 Defendant admits that it attempted to collect a debt owed by Plaintiff to
8 a third-party.

9 G. Defendant admits the allegations contained in Paragraph 17,
10 subpart "G" of Plaintiff's Complaint. Defendant also admits that it had
11 a permissible purpose under the FCRA in obtaining Plaintiff's credit
12 information from Experian.

13 H. Defendant admits the allegations contained in Paragraph 17,
14 subpart "H" of Plaintiff's Complaint. Defendant also admits that it had
15 a permissible purpose under the FCRA in obtaining Plaintiff's credit
16 information from Experian.

17 I. Defendant admits that Plaintiff did not owe a debt to Defendant as
18 alleged in Paragraph 17, subpart "I" of Plaintiff's Complaint, and
19 Defendant admits that it attempted to collect a debt owed by Plaintiff to
20 a third-party.

21 J. Defendant admits the allegations contained in Paragraph 17,
22 subpart "J" of Plaintiff's Complaint. Defendant also admits that it had a
23 permissible purpose under the FCRA in obtaining Plaintiff's credit
24 information from Experian.

25 K. Defendant admits the allegations contained in Paragraph 17,
26 subpart "K" of Plaintiff's Complaint. Defendant also admits that it had
27 a permissible purpose under the FCRA in obtaining Plaintiff's credit
28 information from Experian.

1 L. Defendant admits the allegations contained in Paragraph 17,
2 subpart "L" of Plaintiff's Complaint. Defendant also admits that it had a
3 permissible purpose under the FCRA in obtaining Plaintiff's credit
4 information from Experian.

5 M. Defendant admits the allegations contained in Paragraph 17,
6 subpart "M" of Plaintiff's Complaint. Defendant also admits that it had a
7 permissible purpose under the FCRA in obtaining Plaintiff's credit
8 information from Experian.

9 N. Defendant admits the allegations contained in Paragraph 17,
10 subpart "N" of Plaintiff's Complaint. Defendant also admits that it had a
11 permissible purpose under the FCRA in obtaining Plaintiff's credit
12 information from Experian.

13 O. Defendant admits the allegations contained in Paragraph 17,
14 subpart "O" of Plaintiff's Complaint. Defendant also admits that it had a
15 permissible purpose under the FCRA in obtaining Plaintiff's credit
16 information from Experian.

17 18. Defendant lacks sufficient knowledge to admit or deny the allegations in
18 Paragraph 18 of Plaintiff's Complaint, and therefore, denies the same at the present
19 time.

20 19. Defendant admits that it had a permissible purpose under the FCRA in
21 obtaining Plaintiff's credit information from a credit reporting agency. Except as
22 specifically admitted herein, Defendant denies the allegations contained in Paragraph
23 19 of Plaintiff's Complaint.

24 20. Defendant denies the allegations contained in Paragraph 20 of Plaintiff's
25 Complaint.

26 21. Defendant denies the allegations contained in Paragraph 21 of Plaintiff's
27 Complaint.

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Defendant denies that Plaintiff is entitled to a judgment in her favor, and Defendant further denies that Plaintiff is entitled to recover any relief whatsoever.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. As a separate, affirmative defense, Defendant alleges that Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

9 2. As a separate, affirmative defense, Defendant alleges that its actions were
10 proper and did not violate any provisions of 15 U.S.C. § 1681 *et seq.*

THIRD AFFIRMATIVE DEFENSE

12 3. As a separate, affirmative defense, Defendant alleges that Plaintiff has no
13 private right of action under the Fair Credit Reporting Act.

FOURTH AFFIRMATIVE DEFENSE

15 4. As a separate, affirmative defense, Defendant alleges that alleged mental
16 anguish alone does not support damages under the Fair Credit Reporting Act.

FIFTH AFFIRMATIVE DEFENSE

18 5. As a separate, affirmative defense, Defendant alleges that at all times
19 mentioned in the Complaint, Defendant acted lawfully and within its legal rights, with
20 a good faith belief in the exercise of that right, and in the furtherance of a legitimate
21 business purpose. Further, Defendant acted in good faith in the honest belief that the
22 acts, conduct and communications, if any, of Defendant were justified under the
23 circumstances based on information reasonably available.

SIXTH AFFIRMATIVE DEFENSE

25 6. As a separate, affirmative defense, Defendant alleges that it did not engage
26 in any conduct that was intentional, knowing, willful, reckless, malicious, wanton or
27 outrageous, and that Defendant at all times acted in good faith with respect to its
28 communications with Plaintiff, if any there were.

SEVENTH AFFIRMATIVE DEFENSE

2 7. As a separate, affirmative defense, Defendant alleges that if it is assumed,
3 *arguendo*, that Defendant violated a statute as alleged in Plaintiff's Complaint, which
4 presupposition Defendant denies, such violation was not negligent nor intentional, and
5 resulted from a *bona fide* error, notwithstanding the maintenance of procedures
6 reasonably adapted to avoid any such error.

EIGHTH AFFIRMATIVE DEFENSE

8 8. As a separate, affirmative defense, Defendant alleges that it possessed a
9 permissible purposes pursuant to 15 U.S.C. §1681b of the FCRA in obtaining
10 Plaintiff's consumer report from a consumer reporting agency.

NINTH AFFIRMATIVE DEFENSE

12 9. As a separate, affirmative defense, Defendant alleges that a consumer
13 reporting agency may furnish a consumer report to a person “who intends to use the
14 information in connection with a credit transaction involving the consumer on whom
15 the information is being furnished and involving the extension of credit to, or review
16 or collection of an account of the consumer.” 15 U.S.C. §1681b(a)(3)(A).

TENTH AFFIRMATIVE DEFENSE

18 10. As a separate, affirmative defense, Defendant alleges that a debt collector
19 has a permissible purpose to obtain a consumer report for the purpose of collecting a
20 consumer's debt.

ELEVENTH AFFIRMATIVE DEFENSE

22 11. As a separate, affirmative defense, Defendant alleges Plaintiff's claims are,
23 or may be, barred because the claimed injuries and damages, if any, were or may have
24 been caused by the conduct of third parties, including, but not limited to, the prior,
25 intervening, or superseding conduct of third parties.

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TWELFTH AFFIRMATIVE DEFENSE

2 12. As a separate, affirmative defense, Defendant alleges Plaintiff's claims are,
3 or may be, barred because the claimed injuries and damages were not proximately
4 caused by any acts or omissions of Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

6 13. As a separate, affirmative defense, Defendant alleges, to the extent that
7 Plaintiff claims to have suffered damages, which is disputed by Defendant, Plaintiff has
8 failed to mitigate any such claimed damages.

FOURTEENTH AFFIRMATIVE DEFENSE

10 14. As a separate, affirmative defense, Defendant alleges that a *pro per*
11 plaintiff cannot recover attorneys' fees under the Fair Debt Collection Practices Act
12 and the Fair Credit Reporting Act.

FIFTEENTH AFFIRMATIVE DEFENSE

14 15. As a separate, affirmative defense, Defendant alleges that it reserves the
15 right to allege and assert any additional and/or further affirmative defenses as become
16 apparent to Defendant during the course of this litigation

DEFENDANT'S PRAYER FOR RELIEF

18 WHEREFORE, Defendant prays that Plaintiff's Complaint be dismissed with
19 prejudice, for its attorneys' fees and costs incurred herein, and for such further relief
20 as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

22 PLEASE TAKE NOTICE that Defendant PROGRESSIVE FINANCIAL
23 SERVICES, INC. demands a jury trial in this case.

25 DATED: January 10, 2013

CARLSON & MESSER LLP

By /s/ J. Grace Felipe.

David J. Kamiński

J. Grace Felipe

Attorneys for Defendant
EDWARD GREGORY FINAN

PRO
INC

PROOF OF SERVICE

3 STATE OF CALIFORNIA }
4 COUNTY OF LOS ANGELES }
ss.

I am employed in the County of Los Angeles, State of California.

I am over the age of eighteen years and not a party to the within action. My business address is 5959 W. Century Blvd., Suite 1214, Los Angeles, CA 90045.

8 On January 11, 2013, I served the foregoing document(s) described as: **ANSWER TO**
9 **COMPLAINT** on all interested parties in this action by placing a true copy thereof enclosed in a
sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

11 [X] **BY MAIL:** I sealed such envelope(s) and placed it (them) for collection and mailing on this
12 date following the ordinary business practices of Carlson & Messer LLP. I am "readily familiar" with the business practices of Carlson & Messer LLP for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence would be deposited with the United States Postal Service at Los Angeles, California this same day in the ordinary course of business with postage thereon fully prepaid.

14 [] **ELECTRONIC MAIL:** Based on Court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the said documents to be sent to the persons at the electronic mail addresses listed below (see attached service list). I did not receive within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

17 [] **PERSONAL SERVICE BY HAND:** I personally served such document to address stated on
18 POS Service List.

19 [] **BY FACSIMILE-** I transmitted via telecopier machine such document to the offices of the
20 addressees.

21 [] **(STATE)** - I declare under penalty of perjury under the laws of the State of California that the
22 above is true and correct.

22 [X] **(FEDERAL)** - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed this 11th day of January, 2013, at Los Angeles, California.

Kathryn A. Brown
Kathryn A. Brown

1 **SERVICE LIST**

2 **Thomas, Joscelin B. v. Progressive Financial Services, Inc.**

3 **File No.: 07366.00**

4 Joscelin B. Thomas
5 14626 Red Gum Street
6 Moreno Valley, CA 92555
7 Tele: (951) 616-0044
8 Email: joscelin.thomas@gmail.com

9 **Plaintiff Pro Se**

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